Editor's note: Reconsideration granted; decision vacated -- See Emily B. Hunt (On Reconsideration), 64 IBLA 304 (June 8, 1982)

EMILY B. HUNT

IBLA 76-90 Decided January 6, 1976

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting in part Native allotment application F-16376.
Affirmed.

1. Alaska: Native Allotments

Where evidence shows use and occupancy of only a part of the land claimed in a Native allotment application, an allotment may be approved for the smallest legal 40-acre subdivision embracing the area of use, and the application as to the remainder of the land is properly rejected.

APPEARANCES: David C. Stewart, Esq., Alaska Legal Services Corporation, Nome, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Emily B. Hunt appeals from a decision of the Alaska State Office, Bureau of Land Management, dated June 18, 1975, rejecting in part her Native allotment application F-16376 for failure to show 5 years' substantially continuous use and occupancy of all the land for which she applied as required by the Alaska Native allotment Act, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by § 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (Supp. III, 1973).

Appellant applied for a 160-acre parcel, claiming seasonal use and occupancy for hunting and fishing since 1946. A field examination conducted in July 1973 found no evidence of use and occupancy beyond the area of a campsite. On March 27, 1975, the State Office sent the appellant a letter giving her 60 days in which to submit additional evidence of use and occupancy of the entire area of the land for which she applied. No additional evidence was submitted. The State Office granted an allotment for 40 acres and rejected appellant's application with respect to the rest of the land.

[1] Where a Native had merely used a parcel to dock and store his boat, the Department held that use and occupancy was restricted to the land actually used. Herbert H. Hilscher, 67 I.D. 410 (1960). But the Secretary, in the exercise of the discretion authorized by Congress, promulgated the rule that the smallest legal subdivision of 40 acres shall be the parcel allotted when a Native demonstrates use and occupancy of any part of that subdivision. Solicitor's Opinion, 71 I.D. 340 (1964); 43 CFR 2561.0-8(b). In the instant case, appellant has failed to demonstrate use and occupancy of the land claimed beyond the 40-acre parcel embracing the campsite, and the State Office properly rejected her application as to that land. Hilma Eakon, 22 IBLA 41 (1975).

Appellant has requested a hearing, but applicants for Native allotments do not have a right to a hearing. Pence v. Morton, 391 F. Supp. 1021 (D. Alas., 1975), appeal docketed, No. 2144, 9th Cir., May 23, 1975. This Board has ruled that a hearing is not required where there is no offer of further proof that impels a different legal conclusion. Arthur C. Nelson (On Reconsideration), 15 IBLA 76 (1974). Accordingly, appellant's request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge